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DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

LYNN E. THOMAS
Deputy Attorney General
State of Idaho

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. 80-5258

LOUIS ANDREW MONROE,

Petitioner,

v.

THE STATE OF IDAHO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF IDAHO

RESPONDENT'S BRIEF IN OPPOSITION

LYNN E. THOMAS
Deputy Attorney General
State of Idaho
Statehouse
Boise, Idaho 83720

Counsel for Respondent

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, State of Idaho respectfully requests that the petition of Louis Andrew Monroe for a Writ of Certiorari, seeking review of the decision of the Supreme Court of Idaho, be denied. The decision is reported at 611 P.2d 1036.

REASONS WHY PETITION SHOULD BE DENIED

1. THE QUESTIONS PRESENTED BY THE PETITION FOR CERTIORARI ARE NOT RAISED BY THE OPINION OF THE SUPREME COURT OF IDAHO OF WHICH PETITIONER SEEKS REVIEW.

Monroe's petition for Certiorari is predicated on the assumption that he was "induced" to make incriminating

statements in the absence of counsel.

To the contrary, however, the majority of the Supreme Court of Idaho found that Monroe's statements were not the product of improperly coercive influences.

> Specifically the trial court found that the mother's conversation with the defendant did not bring about the defendant's decision to retreat from the assertion of his right to counsel and his right to remain silent. The trial court did find that the defendant (Monroe), on seeing Jim Muller, and because of seeing him, reached his own individual determination to talk with officers concerning his father's death. From a review of the record, the trial court also found that after the defendant indicated a desire to talk, he was once again advised of his Miranda warnings by the police and signed a waiver of those rights only after Officer Anderson had reviewed with him each of the items mentioned in the waiver. State v. Monroe, 611 P.2d at 1044.

It is, of course, clear that one may voluntarily choose to answer questions without aid of counsel during custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). At most, the issues framed by petitioner revolve about a factual question of voluntariness decided against him in the state courts and not appropriate for review in this Court.

2. THE REPETITION OF REQUESTS TO TALK WITH POLICE INVESTIGATORS IS NOT VIOLATIVE OF THE FIFTH, FOURTEENTH OR SIXTH AMENDMENTS UNLESS COERCIVE PRESSURE IS APPLIED.

Although a criminal suspect is obviously entitled to remain silent and is entitled to be fully advised of the protections afforded by the United States Constitution, Miranda v. Arizona, supra, it is wholly within the power of the individual to make his own informed, voluntary decision

Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
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about whether to answer police questions. Id.; Michigan v. Mosley, supra.

Much of the attention of this court, when it has been confronted with assertions of illegal police bahavior during custodial interrogation and the denial of counsel at critical stages, has been focused on questions of whether the right to silence has been scrupulously honored, Michigan v. Mosley, supra, of when the right to the assistance of counsel arises, Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964), of what forms of police conduct constitutes "interrogation," Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977), and of what conduct suffices to show that a suspect knowingly and voluntarily waived his right to remain silent or his right to the assistance of counsel Michigan v. Mosley, supra.

Petitioner argues that this Court's previous concern with the procedure to be followed once a suspect has invoked his right to remain silent, or has requested the assistance of a lawyer, has left unanswered the question whether police officers may repeat their request that a suspect answer questions or may ask a relative to try to persuade the suspect to answer questions. The State of Idaho does not believe this to be the case.

The governing question here is whether Monroe voluntarily and knowingly chose to talk with police investigaors.

As the opinion of the Idaho Supreme Court reflects, petitioner was not interrogated in custody until after he had waived his right to remain silent and his right to the presence of counsel. 611 P.2d at 1039. The officer who obtained the waiver testified that he was not aware petitioner had previously requested an attorney. Id. Moreover,

State of Idaho
Statehouse, Room 210
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the prior effort by one detective to enlist petitioner's mother in an attempt to procure his cooperation, of which petitioner makes much, was not successful. 611 P.2d at 1038-39.

In fact, petitioner decided, on his own, to speak with police in order to avoid involving a friend in the police investigation of the death of petitioner's father. 611 P.2d at 1044.

In Fare v. Michael C., 442 U.S. 707, 61 L.Ed.2d 197, 99 S.Ct. 2560 (1979) the court explained that the question of waiver was to be resolved by considering whether all of the facts were supportive of a voluntary and knowing waiver by looking to the form of the transaction.

> . . . the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel. Miranda v. Arizona, 384 U.S. at 475-477. . .
>
> This totality of curcumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. . . . The totality approach permits -- indeed it mandates - inquiry into all the circumstances surrounding the interrogation. . . . Fare v. Michael C., 442 U.S. at 724-725, 61 L.Ed.2d at 212.

The State of Idaho believes that the analysis of the Idaho Supreme Court was correct and that the facts recited in its opinion show that the petitioner's waiver of rights was voluntary and knowing.

CONCLUSION

For the reasons stated above, the petition for a Writ of Certiorari should be denied.

Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

Respectfully submitted,

DAVID H. LEROY
Attorney General
State of Idaho

Lynn E. Thomas
Deputy Attorney General
Chief, Appellate Division
State of Idaho
Statehouse
Boise, Idaho 83720
Counsel for Respondent